

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF AMERICA,

v.

Case No. 2:19-cr-76-FtM-60NPM

JOHNNY LEE THORTON, JR.,

Defendant.

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**ORDER DENYING DEFENDANT’S “MOTION TO SUPPRESS”**

This matter is before the Court on Defendant’s “Motion to Suppress,” filed by counsel on July 25, 2019. (Doc. # 31). On August 7, 2019, the United States of America filed a response in opposition to the motion. (Doc. # 34). The Court held a suppression hearing on August 26, 2019. After reviewing the motion, response, testimony, evidence, legal arguments, court file, and the record, the Court finds as follows:

**Background**

The facts are largely undisputed, as the events were captured on a law enforcement body camera. On or about February 8, 2019, shortly after 11:00 p.m., Fort Myers Police Department officers responded to a noise complaint at the Tarpon Street Pier. According to Officer Walsh, when he arrived at the scene, there were two parked vehicles in the parking lot – a red sedan and a gray sedan. Officer Walsh could tell that the music was coming from the red sedan, which could be heard from further than twenty-five feet in violation of Fort Myers Municipal Ordinance 54-197. Defendant was a passenger the red sedan and was temporarily

detained along with the other occupants while Officer Walsh ran identification checks.

According to Officer Walsh, Defendant kept turning his body away from him, as if he was trying to conceal himself. Officer Walsh observed a bulge in Defendant's right front pocket, which was consistent with the appearance of a firearm. Officer Walsh observed Defendant take his right hand and kneel on the ground on the side of the vehicle, in the area that the firearm was later discovered.

During the encounter, Officer Walsh also engaged with the occupants of the gray sedan, asking for their identifications. At that point, Officer Walsh had a group of five identifications, and Defendant's identification card was the first that he ran. The law enforcement database indicated that Defendant should be considered armed and dangerous, and it identified him as a former gang member. Prompted by this discovery, Officer Walsh called other officers on the radio to respond to the scene for officer safety reasons.

While other officers were arriving, Officer Walsh called dispatch to run the other identifications. While dispatch ran the identifications through various databases, Officer Walsh was writing a parking citation for the gray sedan that was illegally parked in a handicapped spot. During this time, Officer Youngblood arrived with his K-9, who advised that there was a positive dog alert at the red sedan. Officer Walsh shined his flashlight in the direction of the red sedan and noticed what appeared to be a firearm located on the passenger's side of the vehicle. Officer Walsh attempted to make contact with Defendant and detain him, but

Defendant resisted. Officer Walsh then went back to the vehicle and removed the firearm from underneath the car. There was also a partially smoked marijuana cigar found near the firearm.

In his Motion, Defendant alleges that he was illegally detained. Defendant argues that since the vehicle was parked and the underlying offense was not a traffic offense but an alleged violation of a municipal ordinance, the legality of the detention should be analyzed as requiring reasonable suspicion that he was engaged in criminal activity. Defendant alleges that because he was a passenger in a parked vehicle subject to a noise complaint, there was no reason to believe he was involved in criminal activity at the time he was detained. Defendant alternatively argues that even if the detention were analyzed as a traffic stop, the detention would not have been justified after he complied with the request to exit the vehicle. Finally, Defendant argues that even if his detention had been lawful at its inception, it quickly became unlawful by the failure of the officers to diligently complete their investigation of the noise violation. Defendant contends that because the detention was illegal, all evidence derived from the attempted frisk must be suppressed, including the firearm, ammunition, DNA evidence, and testimony of the other individuals in the vehicle.

### **Legal Standard**

“The Fourth Amendment prohibits ‘unreasonable searches and seizures’ by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest.” *United States v. Arvizu*, 534 U.S. 266,

273 (2002). As one exception to the warrant requirement, law enforcement officers can stop and briefly detain a person for investigative purposes “if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). “Great deference is given to the judgment of trained law enforcement officers on the scene.” *United States v. Packer*, 375 F.3d 1271, 1276 (11th Cir. 2003). Importantly, the Court should only consider “the facts available to the officer at the moment of seizure.” *Terry*, 392 U.S. at 21-22.

### **Analysis**

#### ***Legality of Stop***

Upon review, the Court finds that the initial stop was lawful because Officer Walsh had reasonable suspicion, if not probable cause, to believe that Defendant was in violation of a municipal ordinance at the time of the detention. The Court initially finds Officer Walsh’s testimony to be highly credible, and notes that Defendant did not present any testimony or evidence to contradict Officer Walsh’s testimony. At the suppression hearing, the Court viewed body camera video from the stop, which further supports Officer Walsh’s testimony as to the encounter.

Florida law allows a law enforcement officer to detain or arrest an individual if the officer has arguable probable cause to believe that the person has violated a municipal or county ordinance in the officer’s presence.<sup>1</sup> § 901.15(1), *Florida*

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<sup>1</sup> In *Thomas v. State*, the Florida Supreme Court explained that the term “arrest” did not necessarily mean a full custodial arrest but instead, as it relates to a violation of a municipal ordinance, “can be

*Statutes.* Prior to any law enforcement action, Officer Walsh had reasonable suspicion, if not probable cause, to believe that Defendant was involved in illegal activity based on Defendant's presence in the parking lot of the pier after 11:00 p.m. and the reported noise violation, in violation of these municipal ordinances. *See United States v. Colvin*, 2018 WL 5253519, at \*3 (N.D. Ala. Oct. 22, 2018).

Consequently, the Court finds that the initial stop and detention was lawful.

### ***Length of Detention***

Defendant additionally argues that even if his detention had been lawful at its inception, it became unlawful by the failure of the officers to diligently complete their investigation of the noise violation. There is no bright-line rule concerning when the length of a detention requires probable cause to support it. *See United States v. Sharpe*, 470 U.S. 675, 685 (1985). Rather, a court must "consider the law enforcement purposes to be served by the stop as well as the time reasonably needed to effectuate those purposes." *Id.* As such, "[c]onsideration of the reasonableness of the length of detention must focus on the purpose of the detention in the first place." *U.S. v. Mosquera-Ramirez*, 729 F.2d 1352, 1356 (11th Cir. 1984).

In the context of a traffic stop, "[a] seizure for a traffic violation justifies a police investigation of that violation." *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015). Similarly, a detention based on a municipal violation would justify a police investigation of that violation. In addition to determining whether to issue a

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construed as meaning to detain for the purpose of issuing a ticket, a summons or a notice to appear." *McNally v. Eve*, Case No. 8:06-cv-2310-T-23EAJ, 2008 WL 1931317, at \*6 (M.D. Fla. May 2, 2008) (quoting *Thomas v. State*, 614 So. 2d 468, 470-71 (Fla. 2003)).

citation, an officer may inquire into certain matters incident to the stop, such as checking identifications and determining whether there are outstanding warrants. *Id.* at 1615. When assessing whether a detention is too long to be justified as an investigative stop, it is “appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.” *Sharpe*, 470 U.S. at 686.

The Court finds that given the circumstances facing him, Officer Walsh pursued his investigation in a diligent and reasonable manner. During the investigation – which lasted around twenty minutes – Officer Walsh was running the identifications of several subjects in two different cars, and he had begun to write a citation for the gray sedan. This case does not appear to involve any unnecessary delay to the legitimate investigation of Officer Walsh. The somewhat longer detention appeared to only be due to the number of licenses that Officer Walsh ran and the citation that he was issuing for the other vehicle. The Court has given careful consideration to the question of whether Officer Walsh’s decision to request identifications from the occupants of the gray vehicle – in addition to the occupants of the red vehicle where Defendant was located – was a pretext that allowed him to keep Defendant on the scene longer than necessary. The Court is convinced that Officer Walsh’s actions with regard to the gray sedan were not pretextual or otherwise designed to cause a delay in the detention of Defendant. Under these circumstances, the Court cannot conclude that the length of this

investigatory stop was unreasonable where Officer Walsh acted diligently in conducting his investigation, running identifications, and writing citations.<sup>2</sup>

Consequently, Defendant's "Motion to Suppress" is hereby **DENIED**.

**DONE** and **ORDERED** in Chambers, in Fort Myers, Florida this 15th day of October, 2019.



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**TOM BARBER**  
**UNITED STATES DISTRICT JUDGE**

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<sup>2</sup> The United States Supreme Court has found that a 20-minute detention was a reasonable search under the Fourth Amendment where the law enforcement agent diligently pursued his investigation and there was no unnecessary delay to the investigation. *See Sharpe*, 470 U.S. at 687.